THE PROBATE AND ADMINISTRATION BILL.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I rise to present the report of the Select Committee on the Probate and Administration Bill and beg to move that the Bill as reported by the Select Committee be taken up for consideration.

MR. K. N. RAMASUBBA AIYAR (*Financial Secretary to Government*): I second it.

PRESIDENT: May I take it that the Council permits the Bill being taken up for consideration.

The motion was carried.

Clause 2.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The first amendment proposed by me is to add "or divest any person of any property which has vested in such person before the commencement of this Regulation" in clause 2 of the Bill which reads as follows:—

"Nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day",

So far as that clause is concerned, as it stands here, there cannot be any difficulty whatsoever. But where the difficulty is likely to occur is with respect to property which has vested before the commencement of the Regulation. That is one difficulty. As suggested by my friend Mr. Paramesvaran Pillai himself even after the commencement of this Regulation but before letters of administration are really issued by a Court of law, certain transfers of property may have taken place or certain properties may have vested in certain persons. In such instances how the Law will have to be administered is another problem which of course did not present itself to me at the time of sending in this amendment. Anyhow my first amendment is to this effect. We are now enacting a Law for the grant of probate and letters of administration and to say that the provisions of this Law would apply to the case of the estate of a person who dies before the Regulation itself comes into force is rather an aggressive proposition. In other words, the question that I am asking the Council to consider is whether there should be anything like retrospective effect given to this particular measure. My humble view with respect to that question is that this measure should receive no retrospective operation whatsoever. That is generally speaking the rule for guidance in matters relating to legislation. Particularly with respect to this question of probate and administration I recollect to have come across certain observations in the decision of the Madras High Court reported in XXXVI—Madras—Page 575, where two eminent Judges, their Lordships, Sundara Aiyar and Sadasiva Aiyar, make certain general observations with regard to the powers that may be exercised by an executor since the commencement of the Probate and Administration Act in British India. They say that it is extremely difficult to believe that the legislature ever intended the powers to be exercised by an executor in the case of a person who died before the

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[Mr. P. K. Narayana Pillai.]

Act itself came into force would be those contemplated by the Act subsequently enacted. Those observations are very pertinent in this connection, though the case itself turned upon another issue with which we are not concerned now.

So in the first instance my submission is this. The provision that no transfer of property duly made before the commencement of this Regulation would be disturbed by it, is all right. But what about the vesting of property before this Regulation comes into force? Property must necessarily vest in certain persons. With the death of persons the vesting of their property is never suspended. On the death of any owner the heir-at-law or the legatee, as the case may be, has the property vested in him by law. An executor or administrator deriving power under a law subsequently passed, is sought to be armed with authority to unsettle properties already vested. That is a proposition which cannot be readily accepted. Hence I say that along with the provisions for not disturbing the transfers of property before the date of this Regulation, must be provided the non-disturbance of the vesting of the property once vested in particular people. That is the purport of the amendment I am now moving. Of course as I submitted, there is another aspect of the question which did not present itself to me till my friend suggested that aspect of it. If the whole question is such as to be re-considered in view of what has been said upon this subject, I am willing to defer the further consideration of this question to a subsequent stage. Otherwise I press it.

MR. KALLUR NARAYANA PILLAI (*Pattanamtitta*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): The purport of the amendment as it stands is, I may point out to the House, that the law of probate and administration shall not apply in the case of the estates of the persons who have died before the Regulation comes into operation. The divesting of estates by reason of this proposed law can take place only if letters of administration are granted. There cannot be any divesting of an estate when a probate is granted. Because a probate can be granted only to an executor named in the will. The estate vests in such an executor immediately on the death of the testator. When the probate is granted, whether it be five or ten years after the death of the testator the estate can vest then also only in the executor and no divesting can take place. The divesting can arise only when letters of administration are granted. On a person's death, his assets must vest in somebody, say his legal heirs, even before letters of administration are granted and it is not absolutely necessary that administration should be taken out at all as is the case in some other places, say England. According to this Bill it is open to the party to take out administration or not. Of course, when the letters of administration do happen to be granted the estate must be divested and must vest in the administrator. That is a feature which is characteristic of the law of the grant of administration generally and is not peculiar to estates of persons who die before the commencement of the Regulation

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which are sought to be exempted by the amendment. But let me say that divesting does not mean in the present case that the property of one person is taken away and given to another. The divesting by the administrator takes place not for his benefit but for the benefit of all those entitled to the property. The administrator is only a trustee. He does not take the estate for himself. He takes it for the purpose of administering the property for the benefit of all those who are entitled to it. If, by reason of such administration, any estate that has been vested in somebody is going to be divested what the House has to consider is whether any hardship will arise because of that. But the question whether the person, the intestate, died before the commencement of the Regulation or not is immaterial in the consideration of this matter. The question is a general one namely, how far hardships can arise by reason of an administrator divesting estates already vested. This proposed law comes to Travancore for the first time and it is not time yet to say anything from the actual working of it. But it seems to me from the provisions of this Bill that the hardships envisaged are two-fold. One is that the letters of administration will not be granted for the mere asking of it. It is left to the discretion of the court to grant them or not and the court will not grant them if hardships will arise. There are express rulings of the British Indian High Courts to the effect and it has been held that if the application for letters is made with a view to some ulterior purpose and not for administering the estate then the letters of administration should be refused. There is express provision to support such a course in the present Bill. I think it is in clause 85 which says :—

> Notwithstanding anything hereinbefore contained, it shall be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Regulation.

So that in such cases it seems to me, at present at any rate, that it is open to the court to refuse the administration to avoid all hardships. But that apart, there is another question that has to be considered which may probably give an answer to the hardships feared. Letters must follow the order of heirship, the order in which the estate vests. So that if there are sons the letters must naturally go to them. That also may be an answer to the fears raised by Mr. Narayana Pillai. But of course I am free to confess that, this measure being quite new to Travancore, it is not possible for anybody at present to envisage all the peculiar difficulties that may arise. However, the Bill as drawn is on the lines of the statutes in British India, Cochin and Mysore. The provisions in question are exactly the same there also. I may say that the corresponding British Indian Act of 1881 contains an express provision which lays down that it will apply to the estate of persons who died before the commencement of that Act. Section 1 of that says: 'It shall come into force on the 1st day of April 1881'. Section 2 says: 'Chapters II to XIII, both inclusive of this Act, shall apply in the case of every Hindu, Mahomedan, Buddist and person exempted under section 332 of the Indian Succession Act, 1865, dying before, on or after the said first day of April 1881: Provided that nothing herein contained shall be deemed

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[Mr. Kayalam Paramesvaran Pillai.]

to render invalid any transfer of property duly made before that day'. The reason is this, whether a person died before the commencement of the Regulation or not it may be necessary to take out administration of the estate; if so why should some estates be deprived of the benefits of this measure. Suppose the Regulation is going to be passed today, and somebody had died yesterday leaving assets. If there is need for administration being taken out why should that estate be deprived of it? I have already explained to the House when this Bill was introduced that the provisions in the measure are very beneficial. They will be very useful to the minors, incapable persons and so on. If these are beneficent provisions for a person who dies to-day, why not for a person who died yesterday. *Prima facie* it seems to me there is no reason why it should not be. With regard however to the larger question whether the divestiture by an administrator of an estate vested in an heir-at-law will work hardship, that is a question that perhaps requires some consideration and I shall promise to the House that I shall consider it very carefully and that if any provision is felt necessary with regard to it I shall introduce an amendment at the third reading of the Bill. I shall be happy to consider any suggestions made to-day or communicated to me hereafter by the non-official members.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): In view of what my friend stated before the House I think the consideration of this particular clause may be suspended till the third reading.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Not suspended.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): For the time being let us pass over this but subject to the promise of my friend. On the strength of that promise I am prepared to withdraw the amendment.

The amendment was by leave withdrawn.

The question that clauses 1 and 2 do form part of the Bill was then put and carried.

Clause 3.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The next amendment proposed is in clause 3. Sir, I may move amendments Nos. 2 and 3 together if you would not object to that. Because the same argument will hold good with respect to the two amendments. And they are regarding the definitions. The first amendment with respect to clause 3 relates to the definition of the expression 'minor' which according to the Bill means 'A person who has not completed his age of eighteen years;' and the next amendment proposed is with respect to the definition of the expression 'Codicil', which means as it stands, 'An instrument made in relation to a will and explaining, altering or adding to its dispositions, and shall be deemed to form part of the will.' The amendments proposed are only very slight and in sense they would not be materially different from the definitions in the Bill. But for the sake of uniformity I think I should draw the attention of the House to the definitions of these expressions as they exist in the Wills Regulation.

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The Probate and Administration Bill will only be a part and continuation of the Wills Regulation. With reference to these expressions we have definitions in the Wills Regulation. The definitions proposed by me will after all only be of insignificant difference. In the Wills Regulation we have 'the' instead of 'his.' With respect to the expression 'Codicil' also the difference is slight. I am rather particular about the wording in these Regulations. Unexpected interpretations may sometimes be put upon these. I need not refer to any particular instance. When you have got a particular definition in the Wills Regulation, to disregard that definition and adopt a different definition would lead to disagreeable surprises. So that I would insist that the same definition as in the Wills Regulation should be maintained here also. Hence these two amendments.

MR. KURANDIPALLIL R. RAMAN PILLAI (*Quilon*): I second him.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): For my part I have no serious objection to accept the amendment. But the Select Committee which included Mr. Narayana Pillai and the learned Deputy President wanted the definitions in this form. The amendments do not make any difference in sense at all. And as apparently the House has no objection to the amendments I may accept them.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): With respect to the observation of my friend, I was in the Select Committee and I asked my friend to accept the definition in the Wills Regulation. But at the last sitting of the Select Committee I was unfortunately absent.

PRESIDENT: He has accepted the amendment.

The amendments were carried.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The next amendment in the same clause is this:

"Insert the words 'as provided hereinafter' after the words 'copy of a will' in the definition of the 'probate'."

The present definition of probate is this:

"Probate means the copy of a will certified under the seal of a court of competent jurisdiction with a grant of administration to the estate of the testator."

This definition as it stands implies that the copy of the will as it exists will have necessarily to be inserted in the probate to be issued by the court. I am proposing another amendment to Clause 77 wherein I point out:

"Notwithstanding anything contained in this or the previous section, the court may refuse to insert in the copy to be annexed any scandalous or objectionable matter contained in the will which in its opinion is irrelevant to the legal validity of the provisions of the same."

That is an amendment that I anticipate to Clause 77. Therefore I say, when it is said that the probate is the copy of a will, it does not necessarily mean that it is a copy without any difference from the will itself as executed. No doubt the definition of probate as it exists in this Bill is exactly the same as in the British Indian Act and as

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such it cannot be found fault with at all. But referring to the English precedents and the practice of English courts I see from the *Empire Digest*, Vol. XXIII, that it is within the discretion of a court exercising probate jurisdiction to strike out scandalous or objectionable matters. All the same such a copy issued by the court exercising probate jurisdiction would answer the purpose. My view is that this is a healthy provision and though the Indian Act is silent about that, it may be adopted by Travancore since this is the first time we are enacting a measure of this kind. The testator probably entertaining very bitter feelings against others and under the hope that the will will not see the light of day till after his death, may write all manner of things in the will which of course would have no bearing on the validity of the dispositions.

MR. K. I. JOSEPH (*Minachil* cum *Devicolam*): Does the reference made, relate to the present clause or to a subsequent clause in the Bill as it now stands ?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): My amendment is in view of Clauses 76 and 77.

MR. K. I. JOSEPH (*Minachil* cum *Devicolam*): If that is so, the present amendment may be postponed for future consideration.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I have no objection. In doing so I may submit that there may arise certain complications. We know the execution of a will takes place in private. Various things may be written by the executants concerned in the will. Hitherto the Wills Regulation permitted only wills deposited or registered by a Sub-Registrar as having efficacy in Travancore. For the first time we are going to enact a measure of this kind to say that wills executed may subsequently be brought to proof and it is quite possible that in such a will a person may indulge in all manner of statements. In granting a copy of the will it is quite irrelevant to reproduce, say, a testator's seditious writings. But if the law makes it obligatory, then Courts cannot help it. The Civil Procedure Code would be a guide in this connection. From the English practice I find that such a power is retained by the English courts. In this connection page 138 of the Empire Digest may be referred. There it is said that even relevant papers may be subjoined to copies of wills. At any rate they are given necessary powers to strike out all sorts of scurrilous writings from the will and it is only wholesome that such a procedure is adopted in our enactment also.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Are there any statutory provisions in England ?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am not quite sure about that. The President may perhaps be able to tell us something about that. The Empire Digest makes a number of references to that. As it stands at present the probate must be a true copy of the will. When I come to Clause 77 I will explain further the nature of the amendment I have proposed and deal with it.

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MR. M. N. PILLAI (*Trivandrum*) : I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : As this amendment is sought to be rested on an amendment to Clause 77, this may perhaps be held over.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : Even if the other amendment is thrown out there is absolutely no objection in having the expression ' as provided hereinafter '.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : As regards that, it is always better to go by the definitions in other parts of the world, if there is no necessity to make any change.

MR. M. SIVATANU PILLAI (*Tovala*) : With regard to the suggestion that there will be more seditious writings or something scandalous or something undesirable, what does the member say ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : As for that, we are concerned only with wills. A will is defined in this way: " Will means the legal declarations of the intentions of the testator with respect to his property which he desires to be carried into effect after his death ". Seditious writings will not be called a will.

MR. M. SIVATANU PILLAI (*Tovala*) : But is there not a restriction with regard to the phraseology ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : I do not quite follow.

MR. M. SIVATANU PILLAI (*Tovala*) : A testator is at liberty to use his own phraseology. There is no restriction with regard to that.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : No. However, it may be considered when Clause 77 is taken up. At present I have either to oppose the amendment or request that it may be held over until Clauses 76 and 77 are taken up for consideration.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : I quite agree in the latter view that the consideration of this amendment be held over until we come to clauses 76 and 77.

PRESIDENT : Does the House accept the suggestion of the Law Member ?

I take it that the House agrees to the discussion of this amendment to Clause 3 being held over for consideration when the amendment to Clause 77 comes up for consideration.

I take it that the House agrees that the Clauses 4 to 14 form part of the Bill.

Clauses 4 to 14 were added to the Bill.

Clause 15.

MR. K. P. NILAKANTA PILLAI (*Chirayinkil*) : I beg to move the following, to be added at the end of the clause.

" But it does not render valid any intermediate acts of the executor tending to the diminution or damage of the estate of the deceased ".

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[Mr. K. P. Nilakanta Pillai.]

I move this amendment in view of the provision with regard to liability of the administrator in Clause 8. Clause 8 says;

"Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the estate of the intestate."

Thus when the administrator is held liable for any intermediate acts of the executor of the deceased which tend to the diminution or damage of the estate, the executor is not held liable. Of course there is Chapter XXIV which deals with liability of the executor or administrator, as the case may be, for devastation. Therefore by omitting this in clause 15 it would mean while an administrator is held liable for any acts which may tend to the diminution or damage of the property of the deceased, the executor is not held liable. It is likely to put such an interpretation. In view of that I move this amendment. Even in spite of Chapter XIV which holds the executor or administrator liable for acts of devastation, by particular omission of such a clause under Section 15, I would think that may create some difficulty. Therefore when the administrator is held liable for all intermediate acts, the executor also should equally be held liable. This is more or less satisfied by Chapter XIV. Therefore there is no harm in accepting this amendment. Only, it makes more clear the liability of the executor. With these words I move the amendment.

MR. KALLOOR NARAYANA PILLAI (*Pattanamtitta*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I oppose it. The executor and the administrator stand on different footing. An executor means a person to whom the execution of the last will of a deceased person is by the testator's appointment confided. An administrator means a person appointed by a court to administer the estate of the deceased person when there is no executor. So the executor is appointed by the testator and an administrator is a person appointed by the Court. The executor gets legal title not by the probate or any act of court but by the will itself. From the moment the testator dies the estate vests in the executor. Naturally an executor must have larger powers than the administrator. But it does not mean that he can do anything he pleases with the property. Section 93, sub-section 2 (i) for instance provides as follows:—

"The power of an executor to dispose of an immovable property so vested in him is subject to any restriction which may be imposed in this behalf by the will appointing him, unless probate has been granted to him and the court which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immovable property specified in the order in a manner permitted by the order."

Again clause 150 says that "when an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Again clause 151 says "when an executor or administrator occasions a loss to the estate by neglecting to get in any part of the

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property of the deceased, he is liable to make good the amount." Thus an obligation to manage the estate in conformity with the provisions of the will and in conformity with ordinary prudence is provided for by these clauses.

MR. K. P. NILAKANTA PILLAI (*Chirayinkil*): Does this amendment go counter to the proposed amendment?

MR. KAYALAM PARMESVARAN PILLAI (*Additional Head Sirkar Vakil*) What clause 15 lays down is that probate of a will when granted establishes the Will from the death of the testator and renders valid all intermediate acts of the executor as such. This is because the executor gets title by the Will and not by the probate. But in the case of an administrator intermediate acts stand on a different footing. Hence the provision in clause 8 against intermediate acts tending to the diminution of the estate. Diminution does not necessarily mean misapplication. Even an ordinary sale or release of debt, though beneficial, constitutes diminution. Such acts may be undertaken by an executor. But he cannot misapply. But an administrator cannot on any account diminish the estate till administration is granted. Further, if the amendment is accepted it will follow that an executor must necessarily apply for and get a probate. Until the probate is granted he cannot do anything with the property. How will he be able to pay a debt if he cannot sell or otherwise diminish the property. The necessary consequence is whenever a will is executed the executor must go to the Court and apply for probate. But we do not want to compel the people to go and get a probate. That was explained at the first reading of the Bill. In view of these facts Mr. K. P. Nilakanta Pillai would, I think, withdraw this amendment.

MR. K. P. NILAKANTA PILLAI (*Chirayinkil*): I do not press the amendment.

The amendment was by leave withdrawn.

Clauses 15 to 22.

Clauses 15 to 22, both inclusive, were then put to the vote of the House and carried.

The clauses were added to the Bill.

Clause 23.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): With respect to Clause 23, it is a short amendment that is proposed. It is stated in the Clause:

"Letters of administration *with the will annexed* shall not be granted to any legatee other than the universal or residuary legatee".

I think instead of the expression 'with the will annexed' it would be better to say 'with the copy of the will annexed'. In the interest of accuracy of expression I thought it would be better to put in the expression 'copy of the will annexed'. It will not be possible to annex the will itself. I fear the same amendment will have to be introduced in other provisions also. I move this amendment for the acceptance of the House.

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MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): It is only the ordinary way of expressing it. The technical expression is '*cumtestamento annexo*', with will annexed. It does not mean that the original will is annexed. Only a copy is annexed; and the usual expression everywhere is 'with will annexed'.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): If my friend is prepared to say that it would be understood in the same way by the Travancore Courts also I have no difficulty in accepting his explanation. In that case it would have been better if there had been a definition to the effect that the expression 'will annexed' means 'copy of the will annexed'. Anyhow, for the present, I am prepared to believe in the elucidation of my friend. How the matter will end elsewhere remains to be seen. I withdraw my amendment.

The amendment was, by leave, withdrawn.

Clauses 23 to 41.

Clauses 23 to 41, both inclusive, as approved by the Council, were then put to the vote of the House and carried.

The clauses were added to the Bill.

Clause 42.

MR. K. P. NILAKANTA PILLAI (*Chirayinkil*): Sir, I move the following amendment to Clause 42:

Add at the end of sub-clause 2 the following:—

"Subject to the general intention of the testator expressed in the will."

Under sub-clause 2 it seems a wide discretion is allowed to the Courts to hold whether a will is qualified or absolute. My object in moving this amendment is that such a wide discretion should not be given to the Courts. Provided there is something in the will which indicates the general intention of the testator the Courts should not be allowed to over-ride this intention and to hold the will entirely absolute or conditional according as they choose. As it is, difficulties may arise. A will may be qualified. Under the clause as it stands, if the Court holds that it is an absolute will the administrator gets absolute powers to deal with the property of the deceased as he likes. This sub-clause 2 contemplates wide discretion being given to the Courts. That should not be the case. For example, a will may mention some particular items of money or something which has to be collected and disposed of by the executor. In such a case if the executor does not take charge of the estate in time the Court may appoint an administrator, and the Court in interpreting the will may hold that the will is absolute and thereby the administrator appointed will be given absolute powers over the property, mentioned and not mentioned in the will. Such a wide discretion should not be given to the Courts. Recently I came across a case in which a will on the face of it seemed to be qualified; but the Court held that it was absolute. The executor therefore got enormous powers on account of the interpretation which the Court put upon the will. In order to avoid such mis-discretion on the part of the Court this amendment is tabled.

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MR. KALLUR NARAYANA PILLAI (*Pattanamtitta*): I second the amendment.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I oppose this amendment. First of all, letters of administration will be *cumtestamento annexo*. The copy of the will will be attached to the letters of administration. Apart from that, if there is a will Mr. K. P. Nilakanta Pillai seems to be under the impression that the Courts get unrestricted powers in regard to the construction of the will. No such thing is contemplated by this provision. Sub-clause 2 reads thus:

"In every such case letters of administration may be limited or not as the Court thinks fit."

The Court has the discretion to say whether the letters of administration should be limited or not. The Court may say that it is limited for a short time only or that it applies only to particular properties. There is no question of the interpretation of the will at all. The probate or Administration Court has no function in regard to the interpretation of the will. Until the real executor comes, letters of administration may be granted. If the Court so thinks fit it may grant letters of administration for ever, *i. e.*, unlimited letters of administration. The Court has discretion only in regard to the limited or the unlimited nature of the letters of administration that it proposes to grant. That is all. The discretion is only about the administrator being appointed with or without limitations, in regard to time or otherwise. It has nothing to do with the interpretation of the will.

MR. K. P. NILAKANTA PILLAI (*Chirayinkil*): I withdraw the amendment.

The amendment was, by leave, withdrawn.

Clauses 42 to 62.

Clauses 42 to 62, both inclusive, were then put to the vote of the House and carried.

The clauses were added to the Bill.

Clauses 63 and 65.

MR. K. P. NILAKANTA PILLAI (*Chirayinkil*): Sir, I may be permitted to move the next two amendments together, because they are similar in nature. The words that I wish to add by virtue of the amendment that I propose have to be added at the end of Clauses 63 and 65 respectively. I move the following amendment: Add the following as (2) (*c*) to Clause 63:

"When the application is to a District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another District the petition shall further state the nature and amount of such assets in each District."

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[Mr. K. P. Nilakanta Pillai.]

The next amendment is: Add the following as sub-clause (*g*) to Clause 65.

"When the application is to a District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another district the petition shall further state the nature and amount of such assets in each district."

These amendments seem to be necessary especially in view of Sub-clause 3 of Clause 69. Sub-clause 3 of Clause 69 runs thus:

"Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of another District Judge, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued in citation."

That means, when an application is presented to the Judge of a particular district and the estates of the deceased are situate in another district, the Judge to whom the application has been presented has to issue a citation to the respective Judges of the other districts inviting notice and ascertaining whether anybody intends to contend. In view of such a provision, a provision similar to the one suggested by my amendment has to be added at the end of Clauses 63 and 65. An application might have, wilfully or by ignorance, omitted to mention the estates of the deceased situated in another district, and probate or letters of administration may be granted by the District Judge, and he may not have notice of the existence of estates of the deceased in other districts. Therefore, for a just adjustment, I submit, these amendments are necessary.

MR. N. K. KRISHNA PILLAI (*Neyyattinkara*): I second the amendment.

MR. M. N. PILLAI (*Trivandrum*): I second the amendment.

PRESIDENT: It has already been seconded.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I have no objection to accept the amendment with some slight amendation of it for verbal purposes. The portion 'the petition shall, further state' may be omitted. This is what Clause 63 (2) says: 'In addition to these particulars the petition shall further state "(*a*) When the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge, etc..... ....."

Therefore the expression 'the petition shall further state' need not be repeated in the new sub-clause.

MR. K. P. NILAKANTA PILLAI (*Chirayinkil*): I agree to the omission of the expression 'the petition shall further state' in the amendment proposed by me.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I accept that amendment. The amendment now runs as follows:

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Amendment to Clause 63 : Add the following as Clause 2 (c) :

"When the application is to a District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another district the nature and amount of such assets in each district."

Amendment to Clause 65: Add the following as Clause (g) :

"When the application is to a District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another district the nature and amount of such assets in each district."

The amendment was put to the vote of the House and carried.

Clauses 63-70.

Clauses 63 to 70 both inclusive were then put to the vote of the House and carried.

The Clauses were added to the Bill.

Clause 71.

MR. K. P. NILAKANTA PILLAI (*Chirayinkil*) : I move the following amendment to Clause 71 : Insert in line 2 after 'below' the words 'or to the following effect.'

The object of the amendment is this. If by negligence or some other reason the application failed to comply with the form given here that should not be the ground for rejecting the application. If the application complies with the material portions of the form given here, that must be held well and good. The clause as it stands is highly technical. To give a broader scope to the provision and to prevent injustice being done I suggest that it would be enough if the application complied with the form given here in regard to the material points. That is the object of my amendment.

MR. G. NARAYANA PILLAI (*Tiruvalla*) : I second the amendment.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Sir, I do not think that the amendment is necessary, because Clause 71 itself expressly states that the form shall be as nearly as circumstances admit. The provision is elastic enough. This is the provision in Mysore, Cochin, England and elsewhere. It has also got this advantage, *viz* , that it indicates that definite notice should be given that objections would be raised.

MR. K. P. NILAKANTA PILLAI (*Chirayinkil*) : In clause 67 also there is a similar provision.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : But here it is stated '*shall be made as nearly as circumstances admit*'. this is ample.

MR. K. P. NILAKANTA PILLAI (*Chirayinkil*): I withdraw the amendment.

PRESIDENT : May I take it that Clauses 71 to 73 do form part of the Bill?

The clauses, as amended, were added to the Bill.

Clauses 74 to 76.

The following amendment was not moved:

MR. K. P. NILAKANTA PILLAI (*Chirayinkil* :

Delete the words " if he thinks proper" occurring between "may" and "transmit" in line 3 of Clause 74.

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PRESIDENT: The question is that Clauses 74 to 76 as amended do form part of the Bill.

The question was put and the clauses were then added to the Bill.

Clause 77.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I beg to move the following amendment:

Add the following as the last paragraph to Clause 77.

'Notwithstanding anything contained in this or the previous section, the court may refuse to insert in the copy to be annexed any scandalous or objectionable matter contained in the will, which in its opinion is irrelevant to the legal validity of the provisions of the same.'

I have already explained what induced me to put forward this amendment on a previous occasion and I have nothing further to add in this connection now. I, therefore, press the amendment and request the Council to accept it.

MR. KURANDIPALLIL R. RAMAN PILLAI (*Quilon*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I am afraid that as matters stand at present, I cannot accept the amendment because I am not sure what consequences it may lead to. It is not that I do not object to the scandalous matter being broadcasted but a probate court is not concerned with the contents and the construction of the will. It is only concerned with the genuineness of the will, the capacity of the testator and what the contents are in fact. In regard to the construction of the contents or the validity of the disposition therein the probate Court is not concerned. That Court therefore does not direct its attention to the validity of its contents. It is not to be expected therefore that that court will scrutinise and find out which are relevant and which are not relevant passages. Further, the probates court's views are not binding on the court of construction, *i.e.*, the court which may later on have the duty of construing the will. That court may find the passages expunged by the probate court necessary for construing the will correctly.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Then the original will be available for that.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): No doubt the original can be taken. But even if the original is taken that should be incorporated in the probate before it can be looked into. If not, it cannot be taken notice of by the Court. Therefore the will must bodily go into the probate. But of course anything that is not a will need not. Further it is not at all likely that scandalous or objectionable matter will be put into a will for the mere pleasure of it.

Mr. P. K. Narayana Pillai has put forward an extreme case and that has therefore to be tested by an extreme case. I say therefore that it may be necessary for the court of construction to read the alleged objectionable passages as a necessary part of the disposition in the will. We should not deprive that court of its materials. If on the

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other hand, the statements are utterly irrelevant to the disposition of the property, that may not be a will as the statements made in a will must relate to the property. If it is not a will, perhaps, a court may have inherent powers to expunge that. Further, there is no provision in the English Statutes irrespective of the power of the court. So the amendment firstly, is inadvisable and secondly unnecessary.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): He runs the risk here to say that the courts possess inherent power.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I do not put it in that way. If the passage is so objectionable and irrelevant that it will not be considered as a will at all, the Court will say that it is not a will and reject it. But if it is a will relating to the disposition of the property then it must be a part of the will however objectionable the terms may be. When such terms exist in the will I do not see any reason, ordinarily speaking, why it should not find a place in the probate.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I have only to say a word by way of reply. My friend says that all courts possess inherent power to put a stop to the circulation of irrelevant and scandalous matter and therefore he conceds that the provision that has been put forward by me is no innovation. Then my friend says that it is not the function of the probate court to construe the will. I never said that. But it is the ordinary inherent jurisdiction of every court to see that scurrilous matter is not propagated through its medium. My friend is very anxious and solicitous about the dispositions of the testator. If that is so let each testator be so good as not to incorporate scandalous expressions in his will. This would act as a deterrent and that is an object aimed at by my amendment. Therefore it would act considerably as a deterrent in the mind of the testator. After all, it is only an occasional matter and but for the presence of such a provision in the Regulation itself the probate court may strike out any word objectionable or scurrilous, as would induce any other court to strike it out. Again it is only an enabling provision-'the court may'.

Sir, we are now enacting for the first time a law regulating grant of probates and administration in Travancore and unless safeguarded by a provision of this description, the convenience and the occasion afforded by the enactment in question may be utilised by persons to advance unwholesome inclinations in the matter of giving expression to their feelings in their last will and testament. It is to prevent that I maintain that such a provision is necessary.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, it seems to me that the grievance is imaginary. Mr. Narayana Pillai himself concedes that an objectionable matter may be put in the probate if it is relevant to the legal validity of the provisions of the will. Then the question of relevancy is the material point. I object to the probate court being called upon to decide the relevancy of passages in a will.

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PRESIDENT: Mr. Narayana Pillai do you press the amendment?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It has to be put to the vote.

The amendment was put to the vote and lost.

15 members voting for and 17 against.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I demand a poll.

A poll was taken and the House divided itself as follows:—

AYES—15.

1.	Mr. N. K. Krishna Pillai	8.	Mr. P. K. Narayana Pillai
2.	,, T. Kumara Pillai	9.	,, K. P. Nilakanta Pillai
3.	,, X. G. Lopez	10.	,, M. N. Pillai
4.	,, K. Madhavan Pillai	11.	,, S. Piraviperumal Pillai
5.	,, K. C. Mammen Mappillai	12.	,, G. Raman Menon
6.	,, G. Narayana Pillai	13.	,, R. Raman Pillai
7.	,, Kallur Narayana Pillai	14.	,, M. Sivatanu Pillai
		15.	,, S. Subrahmanya Karayalar

NOES—17.

1.	Mr. R. Dhanukoti Pillai	9.	Mr. Kayalam Paramesvaran Pillai
2.	,, P. Gomatinayagom Pillai	10.	,, S. Paramesvara Aiyar
3.	,, K. I. Joseph	11.	,, W. H. Pitt
4.	,, P. N. Krishna Pillai	12.	Mrs. M. Poonen Lukose
5.	,, C. V. Kunjuraman	13.	Mr. K. N. Ramasubba Aiyar
6.	Dr. N. Kunjan Pillai	14.	,, T. P. Ramasubba Aiyar
7.	Mr. L. A. Lampard	15.	,, S. C. H. Robinson
8.	,, T. K. Madhavan Nayar	16.	,, K. K. Thomas
		17.	,, A. Vipan

NEUTRALS—4.

1.	Mr. Paul Daniel	3.	Mr. M. Subrahmanya Pillai
2.	,, K. Sivarama Panikkar	4.	,, C. N. Tuppan Nambutiri

The amendment was declared lost.

Clauses 3 and 77 to 127.

PRESIDENT: I take it that clause 3 as amended and clauses 77 to 127 are approved and the House agrees to their forming part of the Bill.

The motion was carried, and the clauses were added to the Bill.

Clause 128.

The following amendment was not moved:—

MR. K. P. NILAKANTA PILLAI (*Chirayinkil*): Add the following as Clause (b) numbering the existing Clause as (a):—

"Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities so much thereof as is not at the time of the testator's decease invested in securities shall be converted into money and invested in such securities mentioned in clause 124."

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PRESIDENT: I take it that the House agrees to Clause 128 being passed and that it do form part of the Bill.

The motion was carried and the Clause was added to the Bill.

CHAPTER XII.

The following motion was not made :—

MR. K. P. NILAKANTA PILLAI (*Chirayinkil*): At the end of Chapter XII add the following as Clause 138, renumbering the Clauses in Chapter XIII onwards : -

"Any payment made *bona fide* by a debtor to the legal representatives of the deceased without knowledge of the latter's will shall be deemed to be a valid discharge."

PRESIDENT : May I take it that the House agrees to Clauses 129 to 152 inclusive being passed and that they do form part of the Bill.

The motion was carried and the Clauses were added to the Bill.

Clause 153.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): To Clause 153 the following may be added as the second paragraph :—

"The Court shall have power to order the payment of costs in proceedings under this Regulation, in accordance with such rules as may be framed by the High Court in this behalf, making the estate of the deceased or the parties personally liable for the same as it deems fit in the circumstances of the case."

In probate proceedings and in proceedings in relation to letters of administration it is often a question whether the executor and the persons who may enter the caveat with respect to the will, are liable personally or the estate should be rendered liable for the costs in connection with the proceedings. That is often a question that crops up before the court, but unfortunately the British Indian Act itself does not provide anything for that. Again the question of costs has been noticed by the Bombay High Court where their Lordships observed that as it stands no power is vested in a court to award costs on anything like the higher scale and such proceedings are dealt with as miscellaneous case for the purpose of costs.

In England they have got graduated scales with respect to the costs. It is clear that if the case is such as the court would deem it necessary to order the payment of costs from the estate of the deceased, the court should have power in that behalf. If the court finds that one of the parties before the court is to be blamed in connection with the protraction of the proceedings or the very origination of the proceedings, then the court may make him personally liable for the costs incurred by the opposite side. The costs as between party and party and party and pleader may be provided for by the court for the purposes of this Regulation. Therefore I suggest that the High Court may be allowed to regulate the costs. If my friend has no objection I move the amendment.

MR. KURANDIPALLIL R. RAMAN PILLAI (*Quilon*): I second the amendment.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I think that this amendment is not necessary because Clause 54 says:

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[Mr. Kayalam Parameswaran Pillai.]

"The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding pending in his court".

Thus the probate court has got all the powers which he will have in a matter of a civil suit and Section 32 of the Civil Procedure Code says as follows :

"Subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, the costs of and incident to all suits, shall be in the discretion of the court, and the court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of such powers" etc.

So that if the Clause 54 gives to the probate court all the powers which a court will have under Section 32 the object in view is achieved. The High Court have powers to make rules. If rules are framed under the Civil Procedure Code that may be reviewed by the House. But if rules are passed under the amendment that will not be subject to the review of this House. It seems to me therefore that the amendment proposed by Mr. Narayana Pillai is not necessary.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : I am very sorry, Sir, that my friend has lost sight of the object of the amendment brought forward. The identical section in the British Indian Act has been the subject of comment. In the matter of suits, there is a basis to calculate the costs. That is, the institution fee would generally be the guiding factor. But in this matter no such foundation is available. The contentions may be very serious and interests involved may be very heavy. In such a case whether the matter should be treated as a mere miscellaneous proceeding by the courts of Travancore is a question for consideration. The Bombay High Court deplored that they have no power to treat it except as a miscellaneous proceeding. Such being the case when property of very serious value is in litigation before the court in connection with the probate sought for, the High Court may be requested to frame rules for the award of costs. That is the object of the amendment. I thought that such a provision was necessary and I press it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : The High Court have got ample powers to make rules for granting costs even as matters stand. But as this amendment does not involve any variation in principle, I have no objection to accept it, if the House is inclined in its favour.

The amendment was accepted by the Council.

Clause 153 was, as ammended, put to the vote and added to the Bill.

Clauses 154—160.

The question that Clauses 154 to 160 do form part of the Bill was then put and carried.

The Clauses were added to the Bill.

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New Clause.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : Add the following as last Clause in the Bill.

"*So much of the Travancore Wills Regulation, (Regulation VI of 1074) as may appear to be inconsistent with the provisions of this Regulation shall be deemed to be repealed by this Regulation.*"

I admit I could have been more specific in the matter of this amendment.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Before he proceeds further I would request him to read Clause 152 which says that—

"(*a*) Nothing herein contained shall validate any testamentary disposition which would otherwise have been invalid;

(*b*) invalidate any such disposition which would otherwise have been valid;

(*c*) deprive any person of any right of maintenance to which he would otherwise have been entitled."

This Clause has been passed by the House.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The last section of the Wills Regulation, for example, is to the effect that nothing contained in the Wills Regulation shall have any effect on the wills of Europeans and Americans in Travancore. Am I to understand that the Probate and Administration Regulation will also not be applicable to Europeans and Americans? The Wills Regulation will not apply to such wills. But all wills in Travancore can be executed only in accordance with the provisions of the Wills Regulation. Either the wills have to be registered or deposited before the Sub-Registrars or proved as contemplated in this Regulation. Suppose a will is executed by a European gentleman. Why should it not be admitted to probate in Travancore. It will have to be admitted to probate. Therefore I say if there is anything repugnant in the Travancore Wills Regulation the Wills Regulation will have to be taken as repealed to that extent. That is the purport of this amendment. I would ask my friend to reconsider it. Since it is already too late, I shall not protract this.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I shall certainly scrutinise the Wills Regulation and if there is anything inconsistent between that Regulation and this Bill, I shall consider whether that should be amended or this should be amended, and if this is to be amended I shall make a motion for it at the third reading.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I do not press this amendment.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I beg to move that the Bill as amended be taken up on a subsequent day and passed.

The motion was carried.

The Council adjourned at 5·32 P. M. to meet again the next day.

P. N. KRISHNA PILLAI,
Secretary to the Legislative Council.

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